

Notice of Allowability

Application No.

10/676,841

Examiner

Aaron Roane

Applicant(s)

TRUCKAI ET AL.

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/26/2005.
2. ☒ The allowed claim(s) is/are 10-24.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 10/27/03, 3/1/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Joel Harris (Reg. No. 44,743) on 2/20/2006.

The application has been amended as follows:

Claims 1-9 have been cancelled. Claims 10, 16 and 17 have been rewritten as follows:

10. (Currently Amended) An electrosurgical jaw structure for delivering energy to engaged tissue, the structure comprising: first and second openable-closeable jaw members, at least one jaw member defining a first peripheral portion and a second central portion wherein the second portion is recessed relative to the first portion; at least one jaw carrying a conductive material comprising a positive temperature coefficient material, the a positive temperature coefficient material capable of conducting current to engaged tissue; and an Rf source operatively coupled to the conductive material.

Art Unit: 3739

16. (Currently Amended) The electrosurgical jaw structure of Claim 10, wherein the conductive material comprises at least in part a positive temperature coefficient material, wherein the a positive temperature coefficient material is disposed beneath a jaw surface.

17. (Currently Amended) An electrosurgical jaw structure for delivering energy to engaged tissue, the structure comprising: first and second paired jaw members each defining a respective surface engagement plane for contacting tissue, the paired jaw members moveable between an open and closed position; the paired jaw members defining a peripheral portion and a central portion; wherein the paired jaw members in the closed position define an engagement gap between respective engagement planes that has a first dimension in the peripheral portion and a second dimension in the central portion, and wherein said second dimension is greater than said first dimension, wherein a portion of at least of one the jaw members comprises a positive temperature coefficient material, the a positive temperature coefficient material capable of conducting current to engaged tissue.

Reasons for Allowance

The following is an examiner's statement of reasons for allowance: the prior art does not disclose, imply, suggest, teach and/or provide a properly motivated combination thereof disclosing a electrosurgical device comprising a positive temperature coefficient (PTC) material that is capable of conducting current into or through the engaged tissue.

Art Unit: 3739

Additionally, Applicant filed a Terminal Disclaimer (accepted 3/2/2006) in order to obviate non-statutory double patenting rejections in view of the following copending cases: 10/351,449, 10/443,974, 10/448,478, 10/934,755, 10/993,413 and 11/118,881.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free)

A.R. *A.R.*
February 20, 2006



LINDA C. M. DVORAK
SUPERVISORY PATENT EXAMINER
GROUP 3700